IN THE HIGH COURT OF JUDICATURE FOR RAJASTHAN AT JODHPUR.

O R D E R

M.K. Ostwal & Anr. Versus Kanti Lal.

S.B. Criminal Misc. Petition No. 228/2006

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M.K. Ostwal & Anr. Versus Kanti Lal.

S.B. Criminal Misc. Petition No. 229/2006

and

M.K. Ostwal & Anr. Versus Kanti Lal.

S.B. Criminal Misc. Petition No. 234/2006

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Date of Order: October 11, 2006

PRESENT

HON'BLE MR. JUSTICE H.R. PANWAR

Mr. Tribhuvan Gupta, for the petitioners.
Mr. Manish Shishodia, for the non-petitioner.

BY THE COURT:

By these three criminal miscellaneous petitions under Section 482 of the Code of Criminal Procedure, 1973 (for short, "the Code" hereinafter), the petitioners seek quashing of Criminal Complaints No. 173/2001, 175/2001 and 174/2001 respectively, titled as Kanti Lal Vs. Tedco Granites Ltd., qua the petitioners.

I have heard learned counsel for the petitioners and the counsel for the complainant/non-petitioner. Carefully gone through the complaints filed by the complainant/non-petitioner against Tedco Granites Ltd., Alokji Mishra and the present petitioners M.K. Ostwal and Smt. Snehlata Mishra for the offence under Section 138 of the Negotiable Instruments Act, 1881 (for short, "the Act" hereinafter).

It is contended by the learned counsel for the petitioners that the petitioners are the Executive Director and Chairman, respectively, of the company Tedco Granites Ltd. (Fertilizer Division) and the complaints have been filed against the company, Alokji Mishra, who is Managing Director of the said company and the present petitioners M.K. Ostwal and Smt. Snehlata Mishra, who are the Executive Director and Chairman respectively, of the said company. According to the learned counsel for the petitioners, the complaints do not fulfill the requirements of Section 141 of the Act, which pertains to the offences by companies.

Sub-section (1) of Section 141 of the Act provides that if the person committing an offence under Section 138 is a company, every person who, at the time of the offence was committed, was in charge of, and was responsible to the company for the conduct of the business of the company, as well as the company, shall be deemed to be guilty of the offence and

shall be liable to be proceeded against and punished accordingly, provided that nothing contained in this sub-section shall render any person liable to punishment if he proves that the offence was committed without his knowledge, or that he had exercised all the diligence to prevent the commission of such offence.

Sub-section (2) of Section 141 of the Act provides that notwithstanding anything contained in sub-section (1) where any offence under this Act has been committed by a company and it is proved that the offence has been committed with the consent or connivance of, or is attributable to, any neglect on the part of, any director, manager, secretary or other officer of the company, such director, manager, secretary or other officer shall also be deemed to be guilty of that offence and shall be liable to be proceeded against and punished accordingly.

According to the learned counsel for the petitioners, there is no averment in the complaint with regard to the present petitioners that they were the Incharge of and were responsible to the company for the conduct of the business of the company. Learned counsel has relied on two decisions of the Hon'ble Supreme Court in S.M.S. Pharmaceuticals Ltd. Vs. Neeta Bhalla & Anr., 2006 (1) NIJ 97 (SC); and Sabitha Ramamurthy & Anr. Vs. R.S.B. Channabasavardhya, 2006(7) Supreme 168.

Learned counsel for the complainant/non-petitioner submits that there is averment in the complaints themselves that

the accused named in the complaints at Serial Nos. 2, 3 and 4 (petitioners herein are shown at serial Nos. 3 and 4) are directly connected with the financial management of the company. It has further been averred in the complaints that the present petitioners and Alokji Mishra are directly connected with the financial management and management of the company and, therefore, they are liable.

I have given my thoughtful consideration to the rival submissions made by the learned counsel for the parties.

In Rajesh Bajaj Vs. State NCT of Delhi & ors., AIR 1999 SC 1216, the Hon'ble Supreme Court held that it is not necessary that a complainant should verbatim reproduce in the body of his complaint all the ingredients of the offence he is alleging. Nor it is necessary that the complainant should state in so may words that the intention of the accused was dishonest or fraudulent. Splitting up of the definition into different components of the offence to make a meticulous scrutiny, whether all the ingredients have been precisely spelled out in the complaint, is not the need at the stage of investigation. If factual foundation for the offence has been laid in the complaint, the Court should not hasten to quash criminal proceedings during investigation stage merely on the premise that one or two ingredients have not been stated with details. For quashing an FIR (a step which is permitted only in extremely rare cases) the

information in the complaint must be so bereft of even the basic facts which are absolutely necessary for making out the offence.

So far as decisions of the Hon'ble Supeme Court in S.M.S. Pharmaceuticals Ltd. Vs. Neeta Bhalla & Anr. (supra); and Sabhitha Ramamurthy & Anr. Vs. R.B.S. Channabasavardhya (supra) relied on by the learned counsel for the petitioners are concerned, the law laid down therein by the Hon'ble Court is that it is necessary to specifically aver in the complaint under Section 141 of the Act that at the time when offence was committed, the person accused was incharge of and responsible for conduct of business of the company. In the instant case, firstly there is specific averment in the complaints that the accused named in the complaint at Serial Nos. 2, 3 and 4 are directly connected with the financial management of the company and it has further been averred therein that the present petitioners and Alokji Mishra are directly connected with the financial management and management of the company. In view of the decision of the Hon'ble Supreme Court in Rajash Bajaj Vs. State NCT of Delhi & ors., it is not necessary that the complainants should verbatim reproduce in the body of the complaint all the ingredients of the offence they are alleging and, therefore, these are not the cases where the complaints can be said to be bereft of even the basic facts which are absolutely necessary for making out the offence. Therefore, in my view, these are not the fit cases for quashing

the complaints.

All the three criminal miscellaneous petitions lack merit and, therefore, dismissed.

(H.R. PANWAR), J.

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